

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 13, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

PSF 06od-193

OAHU

Collection of Deposit Regarding Shoreline Certification Application Located in
Kailua, Oahu, Tax Map Key (1) 4-3-4:76.

APPLICANT:

Kirk O. Belsby and Kathy Borina-Belsby, Trustees of the Belsby Family Trust under an
unrecorded Trust Agreement dated November 6, 1997, whose address is 4826 Kahala
Drive, Honolulu, 91361.

LEGAL REFERENCE:

Sections 171-6(6), 205A-42, Hawaii Revised Statutes (HRS), as amended, and
Chapter 13-222, Hawaii Administrative Rules.

LOCATION AND AREA:

Private property identified by tax map key (1) 4-3-4:76, as shown on the attached map
labeled Exhibit A.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Not applicable, as the subject area is on private land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

Not applicable, as the subject area is on private land.

DCCA VERIFICATION:

Individual owner, not applicable.

REMARKS:

On June 9, 2006, Belsby Family Trust (hereinafter "Applicant") filed an application for shoreline certification for TMK 4-3-4:76 (hereinafter "application"). The purpose of the shoreline certification is to calculate building potential and obtain a building permit.

According to research by the Office of Conservation and Coastal Lands (OCCL), there were some sandbags temporarily placed on the subject private property makai of the seawall during its construction. When the construction was done, some of these sandbags were not removed from the beach. During the review of the shoreline application, the sandbags were cited as a violation at the subject location. The approximate location of the violation is shown on the map and photos attached as Exhibit B1 & B2. Under section 13-222-19, HAR, the Chairperson is prohibited from certifying the shoreline until the violation issues are resolved.

Following discussions with OCCL staff, Applicant agreed to remove the sandbags on or before January 31, 2007, at its expense. Due to timing considerations, the Applicant requested that the Board allow the Applicant to deposit a sum of money with the Department to insure removal of the sandbags, and allow the Department to proceed with the shoreline certification process upon payment of the deposit. As indicated in the letter by OCCL at Exhibit C, OCCL agrees to the approach suggested by the Applicant.

Staff does not object to the shoreline certification process moving forward, but recommends that the Applicant be required to make a deposit to insure that the Applicant carries through with its commitment to remove the sandbags. Staff recommends that the amount of the deposit be equal to the estimated cost of removing the sandbags. In September 2005, the estimated cost of removing the sandbags, as provided by a licensed contractor to the Applicant, was \$6,800. Due to the time elapsed, OCCL suggests the amount be increased to \$10,000.


When removal of the sandbags is complete, the deposit will be returned to the Applicant, without interest. If Applicant fails to remove the sandbags by January 31, 2007 the shoreline certification process will be discontinued. Upon such failure, the Department may remove the sandbags and apply the deposit to all of its costs and expenses for removal. Any remaining balance shall be returned to the Applicant.

RECOMMENDATION:

That the Board authorize the Chairperson to:

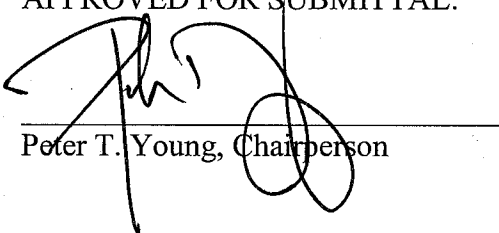
1. Process the shoreline certification application for TMK (1) 4-3-4:76 upon Applicant's deposit of the sum of \$10,000, the estimated cost to remove the sandbags.
2. Return the deposit upon Applicant's written representation and staff confirmation that the removal of the sandbags has been completed.
3. Remove the sandbags if the Applicant fails to complete the removal by January 31, 2007, apply the deposit to all of the Department's costs and expenses for such action, and return any remaining balance to the Applicant.
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barry Cheung
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

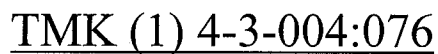


EXHIBIT A

Photos:



Top left: looking east from the west end of the shoreline. Top right: looking west from the eastern neighbor's sand bag revetment.

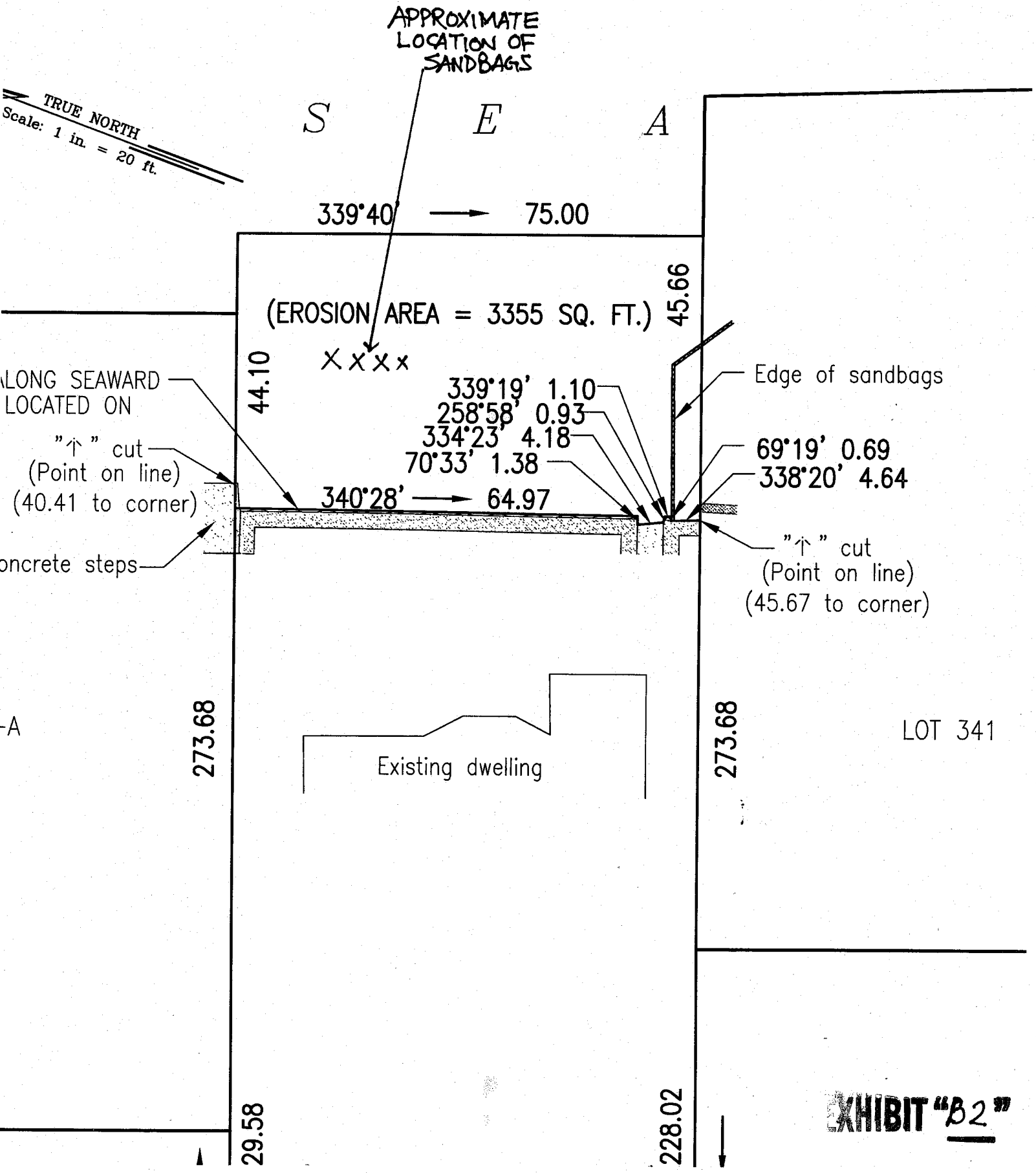


Top left: looking mauka at the west end of the shoreline.
Top right: looking west along the seawalls, from the eastern neighbor's sand bags revetment.

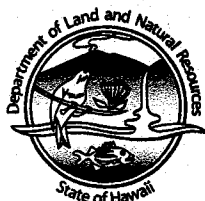
SANDBAGS

Report prepared by Christopher L. Conger CRC

EXHIBIT "B1"



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:CC

File Number Correspondence: OA-07-30

AUG 24 2006

Mr. Kirk Belsby
4826 Kahala Avenue
Honolulu, HI 96816

Dear Mr. Belsby

Subject: Shoreline Violation at Lanikai, Oahu - TMK: (1) 4-3-004:076

This is in response to your August 14, 2006 request to resolve the subject encroachment at Lanikai, Oahu.

Sand bags on the wet beach fronting your property were documented during a shoreline certification site visit conducted by the Office of Conservation and Coastal Lands (OCCL) and Survey Office personnel on July 26, 2006.

According to both City and County and State records, the sand bags are currently unpermitted. The bags were installed by the prior landowner.

Shoreline Certification Rules

Hawaii Administrative Rules § 13-222.19

...The property owner shall first resolve the encroachment or violation problem with the applicable department prior to the chairperson certifying the shoreline.

Under the current rules, with concurrence from the chairperson, a bond with sufficient funds to pay for the removal of the violation may be acceptable as a resolution for the violation. The bond would ensure removal of the violation if it is not voluntarily removed within an agreed upon time.

Agreement

The applicant should draft an agreement (see attachment as example) with the Department of Land and Natural Resource (the Department). The agreement would state:

EXHIBIT "C"

- the extent of work to be conducted,
- the time frame for conducting the work,
- the value of the bond, sufficient to cover the costs of the Department contracting to complete the work to the Department's satisfaction,
- that the Department will process the shoreline application, and
- that removal will be contingent upon receiving authorization from all appropriate agencies.

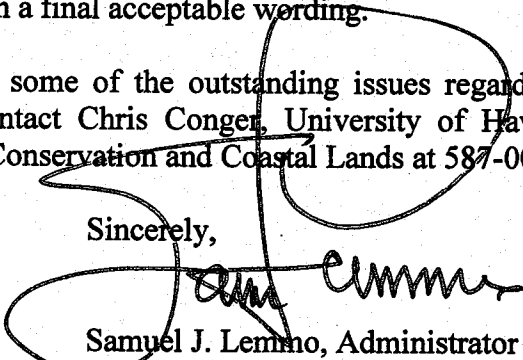
It is expected that the value of the bond will be considerably larger than an estimate to complete the work by contractors already working on site. The value of the bond will need to cover all expenses incurred by the Department for administrative fees and contracting expenses. If the work is completed by the applicant, to the Department's satisfaction, within the time frame stated then the bond will be returned. Should the Department need to complete the work, any amount left over after completion will be returned to the applicant.

It is important to clarify that it is not possible for the Department to guarantee a certified shoreline. The Shoreline Certification process is independent of any other entitlement process. The DLNR cannot predict the issuance of a shoreline certification, because the process involves public input and the entitlement process is discretionary. Thus, the language should be as follows. "The Department agrees to process a complete Shoreline Certification Application". Of course the appropriate sureties (for the potential violation) would need to be in place from the owner.

The specific language of the Agreement to remove the potential violation in exchange for permission to process a shoreline certification will need precise articulation. You will need to work with Land Division staff on a final acceptable wording.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to contact Chris Conger, University of Hawaii Sea Grant Extension Agent, of the Office of Conservation and Coastal Lands at 587-0049.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: Chairperson's Office
Land Division
City and County of Honolulu
Department of Planning and Permitting